

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6149 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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MANIBHAI KISHIBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR HM PARIKH for Petitioner  
MR MG DOSHIT for Respondent No. 1, 6  
None present for Respondent No. 2  
RULE SERVED for Respondent No. 4

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/09/1999

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner, a retired teacher of the Education Department, Government of Gujarat, filed this petition before this court under Article 226 of the Constitution and prayed for the following reliefs:

(A) That Your Lordships be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction quashing and setting aside the aforesaid order annexure G;

(B) That Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ order or direction calling upon the respondents to fix the petitioner's pension at Rs.358/- p.m. fixing the petitioner's gratuity at Rs.12,153-90 and fixing the commuted value of pension at Rs.15,393-84.

(C) That Your Lordships be pleased to issue an appropriate writ or direction calling upon the respondents to pay to the petitioner the aforesaid amount of Rs.955-60 being the amount of difference of salary and dearness allowance for a period between June, 1977 and January, 1979;

(D) Pending hearing and final disposal of this petition, Your Lordships be pleased to stay the execution and operation of the order annexure G in so far as it relates to recovery of Rs.10027-40.

(E) Cost of this petition be provided for;

(F) That such other and further relief as the nature of the case may require be granted.

3. On his retirement, on the basis of the basic pay which the petitioner was drawing, his provisional pension was fixed at Rs.358/- p.m.. Later on, this order was modified and his pension was reduced to Rs.328/- p.m.. As a result of reduction in the pension, consequential reduction would have been there in other amount of retiral benefits. Not only this, I find from the document annexure 'G' at page No.23 that a recovery of Rs.10027-40 has also been ordered.

4. One of the contentions raised by the learned counsel for the petitioner is that this order annexure 'G' at page No.23 of the special civil application dated 7-8-1986 has been passed without giving any notice and opportunity of hearing to the petitioner.

5. Learned counsel for the respondents does not dispute the factual aspect that this order has been passed against the petitioner without notice and

opportunity of hearing.

6. Though only on this ground, this writ petition would have been allowed, but looking to the fact that the petitioner retired in 1981 and this petition is pending since 1986, I do not consider it to be appropriate and in the larger interest of a retired old person to send this matter back to the respondents to decide it after giving notice to the petitioner. There is another reason for which I am not adopting this course that I have my own reservation whether if the matter is remanded back, the respondents would have given any relief to the petitioner.

7. From the record of this special civil application, I find that the petitioner's pay was fixed in the pay scale of Rs.440-750 and subsequently under the order No.88/78 dated 12-1-1978, this pay scale benefits were stopped to be given to the petitioner. However, under the order dated 22nd January, 1979, it is ordered that the petitioner be paid salary grade of Rs.440-750. Learned counsel for the respondent admits that the order dated 22nd January, 1979, was not withdrawn. On the basis of his pay in the pay scale of Rs.440-750 for which the petitioner was legally entitled his provisional pension has been fixed and when this order was not withdrawn, I fail to see any justification whatsoever in the action of the respondents to reduce his pension and further to order for recovery of the excess amount paid. The respondents are bound by their order dated 22nd January, 1979.

8. In the result this special civil application succeeds and the same is allowed. The order annexure 'G' dated 7-8-1986 is quashed and set aside and it is hereby declared that the pension of the petitioner at Rs.358/p.m. has rightly been fixed and taking it to be his pension all other retiral benefits may be fixed accordingly, if later on, the same have been revised. In case, the amount as ordered to be recovered from the petitioner has already been recovered then this amount may be refunded back to the petitioner with interest at the rate of 12 % per annum from the date of recovery till the date of payment. Rule is made absolute in the aforesaid terms. The respondents No.1 and 2 are directed to pay Rs.2000/- as costs of this petition to the petitioner.

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zgs/-